

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JENNIFER HANDLEY, PERSONAL
REPRESENTATIVE OF THE ESTATE
OF DONALD E. CLAUSEN, DECEASED,

Plaintiff,

Case No. 04-71920

v.

Hon. John Corbett O'Meara

THE CITY OF TAYLOR, *et al.*,

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION FOR COSTS AND ATTORNEY FEES**

Before the court is Defendants' motion for costs and attorney fees, filed March 23, 2007.¹ Plaintiff filed a response brief on April 6, 2007. Defendants did not submit a reply. Pursuant to LR 7.1(e)(2)(E.D. Mich. Sept. 8, 1998), the court will decide this matter on the briefs.

This court granted summary judgment in favor of Defendants on January 31, 2007. A judgment was entered the same day. Plaintiff filed a timely motion for reconsideration, which the court denied on February 23, 2007. Plaintiff then filed a notice of appeal on March 20, 2007.

On March 23, 2007, Defendants filed their motion for costs and attorney fees pursuant to the Michigan mediation rule, MCR 2.403(O). The parties had stipulated to mediation, including MCR 2.403(O), which provides for an award of costs and attorney fees to the party that rejects mediation and obtains an outcome or verdict less favorable than the mediation award. MCR 2.403(O)(8) requires that a motion for fees and costs be filed within twenty-eight days of the

¹ "Defendants" for the purposes of this motion include all Defendants in the caption except Cadet P. DeGuili.

entry of judgment. Plaintiff opposes an award of costs and attorney fees because Defendants did not file their motion within fourteen days of the judgment as required by Fed. R. Civ. P.

54(d)(2)(B).

Plaintiff is correct that the time period set forth in Fed. R. Civ. P. 54(d)(2)(B), rather than MCR 2.403(O)(8), applies. Local Rule 16.3 provides that MCR 2.403 applies to cases that the court selects for mediation. However, the Local Rules must be consistent with the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 83(a); Yamaha Corp. of America v. Stonecipher's Baldwin Pianos & Organs, 975 F.2d 300, 301 (6th Cir. 1992). This court is bound by the Federal Rules, which require Defendants to file any motion for attorney fees and costs within fourteen days of the judgment. Defendants' motion is untimely pursuant to Rule 54(d)(2)(B). See Allen v. Murph, 194 F.3d 722, 723-24 (6th Cir. 1999) (affirming denial of leave to file untimely application for attorney fees where party could not demonstrate excusable neglect).

Accordingly, IT IS HEREBY ORDERED that Defendants' March 23, 2007 motion for costs and attorney fees pursuant to mediation is DENIED.

s/John Corbett O'Meara
United States District Judge

Dated: July 5, 2007

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, July 5, 2007, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager